

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

GILBERT JAMES,

Plaintiff,

v.

Civil Action No. 3:11cv00221

ENCORE CAPITAL GROUP, INC., *et al.*

Defendants.

**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR EXTENTION OF
TIME TO SERVE EXPERT DISCLOSURES**

Defendants, Encore Capital Group, Inc. ("Encore"), Midland Funding, LLC ("Midland Funding"), and Midland Credit Management, Inc. ("Midland Credit Management") (collectively, the "Midland Defendants"), by counsel, and pursuant to Fed. R. Civ. P. 6(b)(1) and Local Civil Rule 7(F)(2)(b), submit the following memorandum in support of their Motion for Extension of Time to Serve Expert Disclosures.

INTRODUCTION

Under the terms of the Pretrial Scheduling Order entered in this case, Plaintiff's expert disclosures were due to be served by October 17, 2011, with the Midland Defendants' expert disclosures due to be served thirty days after that deadline. (*See* Dkt. No. 16). On October 17, 2011, Plaintiff moved for a two-week extension to serve his expert disclosures (until October 31, 2011), which was freely agreed to by counsel for the Midland Defendants provided that they were also granted a reciprocal extension. (*See* Dkt. Nos. 73, 79). On October 31, 2011, Plaintiff again moved for an indefinite extension to serve his expert disclosures. (Dkt. No. 77). By Order dated November 15, 2011, the Court granted Plaintiff's second motion, stating that Plaintiff's expert disclosures would be due within three weeks of the resolution of the pending discovery disputes. (*See* Dkt. No. 84).

ARGUMENT

Fed. R. Civ. P. 6(b) sets forth the requirements for obtaining an extension of time in a civil matter. *See, e.g., Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd P'ship*, 507 U.S. 380, 389 n.4 (1993). Rule 6(b) gives the district court the discretion to extend any specified deadline for “good cause” shown. Fed. R. Civ. P. 6(b)(1). Likewise, Fed. R. Civ. P. 16(b)(4) provides that a scheduling order may be modified for good cause. The decision whether to provide such an extension of time rests within the discretion of the district court. Fed. R. Civ. P. 6(b)(1).

As initially entered by the Court, the Pretrial Scheduling Order provided that the Midland Defendants’ expert disclosures would be due thirty days after the service of Plaintiff’s expert disclosures. (*See* Dkt. No. 16 p. 4). Consistent with the ordinary course of litigation in this district, this schedule would have permitted the Midland Defendants to retain an expert witness to respond to the conclusions that were previously proffered by Plaintiff’s expert witness. Due to the recent continuance of the deadline for service of Plaintiff’s expert disclosures, however, the deadline for service of the Midland Defendants’ expert disclosures is now scheduled to occur three weeks prior to the service of Plaintiff’s expert disclosures. Accordingly, this inversion of the ordinary course of litigation does not permit the Midland Defendants to meaningfully retain an expert to respond to Plaintiff’s proposed expert testimony.

Therefore, in order to permit a meaningful rebuttal of Plaintiff’s expert testimony, good cause exists to extend the Midland Defendants’ deadline for service of expert disclosures until two weeks after Plaintiff serves his expert disclosures, instead of the thirty days set forth in the Pretrial Scheduling Order. *See, e.g., Hunsaker v. P&G Mfg. Co.*, 2010 U.S. Dist. LEXIS 106993 (D. Kan. Oct. 5, 2010) (granting defendant’s extension to serve its expert disclosures until “30 days after service of Plaintiff’s expert disclosures” due to the concurrent granting of plaintiff’s motion for an extension to serve his expert disclosures). The Midland Defendants certify under Local Civil Rule 37(E) that they have attempted to obtain Plaintiff counsels’ agreement to the

terms of this extension, but that Plaintiff's counsel would not agree to the relief requested in this motion.

CONCLUSION

WHEREFORE, Defendants, Encore Capital Group, Inc., Midland Funding, LLC and Midland Credit Management, Inc., respectfully request that the Court: (1) grant their Motion for Extension of Time to Serve Expert Disclosures; and (2) grant the Midland Defendants such further relief that the Court deems appropriate.

**ENCORE CAPITAL GROUP, INC.,
MIDLAND FUNDING, LLC and
MIDLAND CREDIT MANAGEMENT, INC.**

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November 2011, I filed a true and correct copy of the foregoing on the Court's Electronic Case Filing System, which will send a notice of electronic filing to:

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